

108TH CONGRESS
1ST SESSION

H. R. 3233

To require financial institutions and financial service providers to notify customers of the unauthorized use of personal information, to amend the Fair Credit Reporting Act to require fraud alerts to be included in consumer credit files in such cases, and to provide customers with enhanced access to credit reports in such cases.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 2003

Mr. GUTIERREZ introduced the following bill; which was referred to the
Committee on Financial Services

A BILL

To require financial institutions and financial service providers to notify customers of the unauthorized use of personal information, to amend the Fair Credit Reporting Act to require fraud alerts to be included in consumer credit files in such cases, and to provide customers with enhanced access to credit reports in such cases.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Identity Theft Notifi-
5 cation and Credit Restoration Act of 2003”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds as follows:

3 (1) The privacy and financial security of indi-
4 viduals is increasingly at risk due to the ever more
5 widespread collection of personal information by
6 both the private and public sector.

7 (2) Credit card transactions, real estate
8 records, consumer surveys, credit reports, and Inter-
9 net websites are all sources of personal information
10 and form the source material for identity thieves.

11 (3) Identity theft is one of the fastest growing
12 crimes committed in the United States, and identity
13 theft has become one of the major law enforcement
14 challenges of the new economy, as vast quantities of
15 sensitive personal information are now vulnerable to
16 criminal interception and misuse.

17 (4) Criminals who steal personal information
18 use the information to open fraudulent credit card
19 accounts, write bad checks, buy products, and com-
20 mit other financial crimes with assumed financial
21 identities.

22 (5) In September of 2003, the Federal Trade
23 Commission released a survey showing that
24 27,300,000 Americans have been victims of identity
25 theft in the last 5 years, including 9,900,000 people
26 in the last year alone.

1 (6) According to the survey, last year's identity
2 theft losses to businesses and financial institutions
3 totaled nearly \$48,000,000,000 and consumer vic-
4 tims reported \$5,000,000,000 in out-of-pocket ex-
5 penses.

6 (7) Identity theft is costly to consumers and to
7 the United States marketplace.

8 (8) Victims of identity theft are often required
9 to contact numerous Federal, State, and local law
10 enforcement agencies, consumer credit reporting
11 agencies, and creditors over many years, as each
12 event of fraud arises.

13 (9) The Federal Government, financial institu-
14 tions, financial service providers, and credit report-
15 ing agencies that handle sensitive personal informa-
16 tion of consumers have a shared responsibility to
17 protect the information from identity thieves, to as-
18 sist identity theft victims, and to mitigate the harm
19 that results from fraud perpetrated in the name of
20 the victim.

21 (10) The private sector can better protect con-
22 sumers by improving customer notification, imple-
23 menting effective fraud alerts, affording greater con-
24 sumer access to credit reports, and establishing
25 other financial identity theft prevention measures.

1 **SEC. 3. TIMELY NOTIFICATION OF UNAUTHORIZED ACCESS**
2 **TO PERSONAL INFORMATION.**

3 Subtitle B of title V of the Gramm-Leach-Bliley Act
4 (15 U.S.C. 6821 et seq.) is amended—

5 (1) by redesignating sections 526 and 527 as
6 sections 528 and 529, respectively; and

7 (2) by inserting after section 525 the following:

8 **“SEC. 526. NOTIFICATION TO CUSTOMERS OF UNAUTHOR-**
9 **IZED ACCESS TO PERSONAL INFORMATION.**

10 “(a) DEFINITIONS.—For purposes of this section, the
11 following definitions shall apply:

12 “(1) BREACH.—The term ‘breach’—

13 “(A) means unauthorized acquisition of
14 computerized data or paper records which com-
15 promises the security, confidentiality, or integ-
16 rity of personal information maintained by or
17 on behalf of a financial institution; and

18 “(B) does not include a good faith acquisi-
19 tion of personal information by an employee or
20 agent of a financial institution for a business
21 purpose of the institution, if the personal infor-
22 mation is not subject to further unauthorized
23 disclosure; and

24 “(2) PERSONAL INFORMATION.—With respect
25 to a customer of a financial institution, the term
26 ‘personal information’ means the first name or first

1 initial and last name of the customer, in combina-
2 tion with any 1 or more of the following data ele-
3 ments, when either the name or the data element is
4 not encrypted:

5 “(A) A social security number.

6 “(B) A driver’s license number or other of-
7 ficially recognized form of identification.

8 “(C) A credit card number, debit card
9 number, or any required security code, access
10 code, or password that would permit access to
11 financial account information relating to that
12 customer.

13 “(b) NOTIFICATION RELATING TO BREACH OF PER-
14 SONAL INFORMATION.—

15 “(1) FINANCIAL INSTITUTION REQUIREMENT.—

16 In any case in which there has been a breach of per-
17 sonal information at a financial institution, or such
18 a breach is reasonably believed to have occurred, the
19 financial institution shall promptly notify—

20 “(A) each customer affected by the viola-
21 tion or suspected violation;

22 “(B) each consumer reporting agency de-
23 scribed in section 603(p) of the Fair Credit Re-
24 porting Act; and

1 “(C) appropriate law enforcement agencies,
2 in any case in which the financial institution
3 has reason to believe that the breach or sus-
4 pected breach affects a large number of cus-
5 tomers, including as described in subsection
6 (e)(1)(C), subject to regulations of the Federal
7 Trade Commission.

8 “(2) OTHER ENTITIES.—For purposes of para-
9 graph (1), any person that maintains personal infor-
10 mation for or on behalf of a financial institution
11 shall promptly notify the financial institution of any
12 case in which such customer information has been,
13 or is reasonably believed to have been, breached.

14 “(c) TIMING.—Any notification required by this sec-
15 tion shall be made—

16 “(1) promptly and without unreasonable delay,
17 upon discovery of the breach or suspected breach;
18 and

19 “(2) consistent with—

20 “(A) the legitimate needs of law enforce-
21 ment, as provided in subsection (d); and

22 “(B) any measures necessary to determine
23 the scope of the breach or restore the reason-
24 able integrity of the information security system
25 of the financial institution.

1 “(d) DELAYS FOR LAW ENFORCEMENT PURPOSES.—
2 Any notification required by this section may be delayed
3 if a law enforcement agency determines that the notifica-
4 tion would impede a criminal investigation, and in any
5 such case, notification shall be made promptly after the
6 law enforcement agency determines that it would not com-
7 promise the investigation.

8 “(e) FORM OF NOTICE.—Any notification required by
9 this section may be provided—

10 “(1) to a customer—

11 “(A) in writing;

12 “(B) in electronic form, if the notice pro-
13 vided is consistent with the provisions regarding
14 electronic records and signatures set forth in
15 section 101 of the Electronic Signatures in
16 Global and National Commerce Act;

17 “(C) if the Federal Trade Commission de-
18 termines that the number of all customers af-
19 fected by, or the cost of providing notifications
20 relating to, a single breach or suspected breach
21 would make other forms of notification prohibi-
22 tive, or in any case in which the financial insti-
23 tution certifies in writing to the Federal Trade
24 Commission that it does not have sufficient cus-

1 tomer contact information to comply with other
2 forms of notification, in the form of—

3 “(i) an e-mail notice, if the financial
4 institution has access to an e-mail address
5 for the affected customer that it has rea-
6 son to believe is accurate;

7 “(ii) a conspicuous posting on the
8 Internet website of the financial institu-
9 tion, if the financial institution maintains
10 such a website; or

11 “(iii) notification through the media
12 that a breach of personal information has
13 occurred or is suspected that compromises
14 the security, confidentiality, or integrity of
15 customer information of the financial insti-
16 tution; or

17 “(D) in such other form as the Federal
18 Trade Commission may by rule prescribe; and

19 “(2) to consumer reporting agencies and law
20 enforcement agencies (where appropriate), in such
21 form as the Federal Trade Commission may pre-
22 scribe, by rule.

23 “(f) CONTENT OF NOTIFICATION.—Each notification
24 to a customer under subsection (b) shall include—

25 “(1) a statement that—

1 “(A) credit reporting agencies have been
2 notified of the relevant breach or suspected
3 breach; and

4 “(B) the credit report and file of the cus-
5 tomer will contain a fraud alert to make credi-
6 tors aware of the breach or suspected breach,
7 and to inform creditors that the express author-
8 ization of the customer is required for any new
9 issuance or extension of credit (in accordance
10 with section 605(g) of the Fair Credit Report-
11 ing Act); and

12 “(2) such other information as the Federal
13 Trade Commission determines is appropriate.

14 “(g) COMPLIANCE.—Notwithstanding subsection (e),
15 a financial institution shall be deemed to be in compliance
16 with this section if—

17 “(1) the financial institution has established a
18 comprehensive information security program that is
19 consistent with the standards prescribed by the ap-
20 propriate regulatory body under section 501(b);

21 “(2) the financial institution notifies affected
22 customers and consumer reporting agencies in ac-
23 cordance with its own internal information security
24 policies in the event of a breach or suspected breach
25 of personal information; and

1 “(3) such internal security policies incorporate
2 notification procedures that are consistent with the
3 requirements of this section and the rules of the
4 Federal Trade Commission under this section.

5 “(h) CIVIL PENALTIES.—

6 “(1) DAMAGES.—Any customer injured by a
7 violation of this section may institute a civil action
8 to recover damages arising from that violation.

9 “(2) INJUNCTIONS.—Actions of a financial in-
10 stitution in violation or potential violation of this
11 section may be enjoined.

12 “(3) CUMULATIVE EFFECT.—The rights and
13 remedies available under this section are in addition
14 to any other rights and remedies available under ap-
15 plicable law.

16 “(i) RULES OF CONSTRUCTION.—

17 “(1) IN GENERAL.—Compliance with this sec-
18 tion by a financial institution shall not be construed
19 to be a violation of any provision of subtitle A, or
20 any other provision of Federal or State law prohib-
21 iting the disclosure of financial information to third
22 parties.

23 “(2) LIMITATION.—Except as specifically pro-
24 vided in this section, nothing in this section requires
25 or authorizes a financial institution to disclose infor-

1 mation that it is otherwise prohibited from disclosing
2 under subtitle A or any other provision of Federal
3 or State law.

4 “(3) NO NEW RECORDKEEPING OBLIGATION.—
5 No provision of this section shall be construed as
6 creating an obligation on the part of a financial in-
7 stitution to obtain, retain, or maintain information
8 or records that are not otherwise required to be ob-
9 tained, retained, or maintained in the ordinary
10 course of business of the financial institution or
11 under other applicable law.”.

12 **SEC. 4. INCLUSION OF FRAUD ALERTS IN CONSUMER**
13 **CREDIT REPORTS.**

14 Section 605 of the Fair Credit Reporting Act (15
15 U.S.C. 1681c) is amended by adding at the end the fol-
16 lowing:

17 “(g) FRAUD ALERTS.—

18 “(1) DEFINED TERM.—For purposes of this
19 subsection, the term ‘fraud alert’ means a clear and
20 conspicuous statement in the file of a consumer that
21 notifies all prospective users of the consumer credit
22 report (or any portion thereof) relating to the con-
23 sumer, that—

24 “(A) the identity of the consumer may
25 have been used, without the consent of the con-

1 sumer, to fraudulently obtain goods or services
2 in the name of the consumer; and

3 “(B) the consumer does not authorize the
4 issuance or extension of credit in the name of
5 the consumer, unless the issuer of such credit,
6 upon receiving appropriate evidence of the true
7 identity of the consumer—

8 “(i) obtains express preauthorization
9 from the consumer at a telephone number
10 designated by the consumer; or

11 “(ii) utilizes another reasonable means
12 of communication to obtain the express
13 preauthorization of the consumer.

14 “(2) INCLUSION OF FRAUD ALERT IN CON-
15 SUMER FILE.—

16 “(A) UPON NOTIFICATION BY FINANCIAL
17 INSTITUTION.—A consumer reporting agency
18 shall include a fraud alert meeting the require-
19 ments of this subsection in the file of a con-
20 sumer promptly upon receipt of a notice from
21 a financial institution under section
22 526(b)(1)(B) of the Gramm-Leach-Bliley Act
23 relating to the consumer.

24 “(B) UPON REQUEST OF CONSUMER.—A
25 consumer reporting agency shall include a fraud

1 alert meeting the requirements of this sub-
2 section in the file of a consumer promptly upon
3 receipt of—

4 “(i) a request by the consumer; and

5 “(ii) appropriate evidence of—

6 “(I) the true identity of the per-
7 son making the request; and

8 “(II) the claim of identity theft
9 forming the basis for the request.

10 “(3) CONSUMER REPORTING AGENCY RESPON-
11 SIBILITIES.—A consumer reporting agency shall en-
12 sure that each person procuring consumer credit in-
13 formation with respect to a consumer is made aware
14 of the existence of a fraud alert in the file of that
15 consumer, regardless of whether a full credit report,
16 credit score, or summary report is requested.

17 “(4) REMOVAL OF FRAUD ALERTS.—The Fed-
18 eral Trade Commission shall issue appropriate regu-
19 lations to establish—

20 “(A) the duration of fraud alerts required
21 by this subsection, which standard shall be ap-
22 plied consistently to all consumer reporting
23 agencies, to the extent possible; and

1 “(B) procedures for the removal of fraud
2 alerts included in the files of consumers under
3 this subsection.

4 “(5) VIOLATIONS.—

5 “(A) CONSUMER REPORTING AGENCY.—A
6 consumer reporting agency that fails to notify
7 any user of a consumer credit report of the ex-
8 istence of a fraud alert in that report shall be
9 in violation of this section.

10 “(B) USER OF A CONSUMER REPORT.—A
11 user of a consumer report that fails to comply
12 with preauthorization procedures contained in a
13 fraud alert in the file of a consumer and issues
14 or extends credit in the name of the consumer
15 to a person other than the consumer shall be in
16 violation of this subsection.

17 “(C) NO ADVERSE ACTION BASED SOLELY
18 ON FRAUD ALERT.—It shall be a violation of
19 this title for the user of a consumer report to
20 take adverse action with respect to a consumer
21 based solely on the inclusion of a fraud alert in
22 the file of that consumer, as required by this
23 subsection.”.

1 **SEC. 5. ACCESS TO CREDIT REPORTS AND SCORES.**

2 (a) NO FEE IN CERTAIN CASES.—Section 612(c) of
3 the Fair Credit Reporting Act (15 U.S.C. 1681j(c)) is
4 amended to read as follows:

5 “(c) NO-COST ACCESS TO CREDIT REPORTS AND
6 SCORES.—

7 “(1) IN GENERAL.—Upon request of a con-
8 sumer, and without charge to the consumer, a con-
9 sumer reporting agency shall make all of the disclo-
10 sures listed under section 609 to the consumer—

11 “(A) once during each calendar year; and

12 “(B) once every 3 months during the 1-
13 year period beginning on the date on which a
14 fraud alert is included in the file of a consumer
15 under section 605(g).

16 “(2) FEE AUTHORIZED.—A credit reporting
17 agency may charge a reasonable fee for the costs of
18 disclosures under paragraph (1)(B) to the financial
19 institution providing the notification that is the basis
20 for the subject fraud alert, as required by section
21 526(b)(1)(B) of the Gramm-Leach-Bliley Act.”.

22 (b) INCLUSION OF CREDIT SCORES.—Section
23 609(a)(1) of the Fair Credit Reporting Act (15 U.S.C.
24 1681g(a)(1)) is amended by striking “except that” and
25 all that follows through “predictors” and inserting “in-
26 cluding any credit score”.

1 **SEC. 6. REGULATIONS.**

2 Not later than 180 days after the date of enactment
3 of this Act, the Federal Trade Commission, after consulta-
4 tion with Federal banking agencies, the Securities and Ex-
5 change Commission, and other appropriate financial serv-
6 ices regulatory agencies, shall issue final regulations to
7 carry out the amendments made by this Act.

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